

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
3:19-CV-405-FDW-DCK

UNITED STATES OF AMERICA AND
THE STATE OF NORTH CAROLINA *ex*
rel. HEATHER COLEMAN,

Plaintiffs,

v.

FAMILY FIRST HOME HEALTH CARE
LLC, and MARION JAMES,

Defendants.

UNDER SEAL

**THE UNITED STATES AND STATE OF NORTH CAROLINA'S
JOINT NOTICE OF ELECTION TO INTERVENE IN PART AND TO DECLINE TO
INTERVENE IN PART AND MOTION TO UNSEAL COMPLAINT**

Pursuant to the False Claims Act, 31 U.S.C. §§ 3730(b)(2) and (4), and the North Carolina False Claims Act, N.C.G.S. §§ 1-608(b)(2) and (4), the United States and State of North Carolina (together, the "Governments") jointly notify the Court of their decision to intervene in part of this action and to decline to intervene in part of this action.¹

The Governments intervene in that part of the action which alleges that Family First Home Health Care LLC, and Marion James (together, "Family First") knowingly submitted or caused the submission of false claims to the Medicaid Program in violation of the FCA by billing for claims related to: (1) services not rendered, (2) employing non-eligible family members, and (3) forging and falsifying Medicaid documents. The Governments decline to intervene in that part of the action which alleges that Family First violated Medicaid polices regarding training, criminal background checks, and supervisory visits. During the course of their investigation, the

¹ The Governments have conducted a joint investigation and will likewise file a joint Complaint in Intervention.

Governments discovered additional information, and intend to file a joint complaint within 60 days.

Although the United States declines to intervene in a portion of the action, we respectfully refer the Court to 31 U.S.C. § 3730(b)(1), which allows the relator to maintain the declined portion of the action in the name of the United States; providing, however, that the “action may be dismissed only if the court and the Attorney General give written consent to the dismissal and their reasons for consenting.” *Id.* Similarly, N.C. Gen. Stat. § 1-608(b)(1) and (4) allows the relator to maintain the declined portion of the action in the name of the State of North Carolina, providing, however, the “action may be dismissed only if the court and the Attorney General have given written consent to the dismissal and the reasons for consenting.” *Id.* Therefore, the United States and the State of North Carolina request that, should either the relator or the defendant propose that the part of the action in which the United States and State of North Carolina have not intervened be dismissed, settled, or otherwise discontinued, this Court solicit the written consent of the United States and the State of North Carolina before ruling or granting its approval.

Furthermore, pursuant to 31 U.S.C. § 3730(c)(3) and N.C. Gen. Stat. § 1-609(f), the Governments request that all pleadings filed in this action, even as to the non-intervened part of this action, be served upon the Governments; the Governments also request that all orders issued by the Court be sent to the Governments’ counsel. The Governments reserve their right to order any deposition transcripts and to intervene in the portion of this action in which it is declining to intervene today, for good cause, at a later date.

The United States reserves the right to seek the dismissal of the relator’s action or claim on any appropriate grounds, including under 31 U.S.C. §§ 3730(b)(5) and (e)(4). Similarly, the State

of North Carolina reserves the right to dismissal of relator's action or claim pursuant to N.C. Gen. Stat. § 1-609(b).

Finally, the Governments request that the relator's Complaint, Amended Complaint, this Notice, and the attached proposed Order be unsealed. The Governments request that all other papers on file in this action remain under seal because in discussing the content and extent of the Governments' investigation, such papers are provided by law to the Court alone for the sole purpose of evaluating whether the seal and time for making an election to intervene should be extended.

A proposed order accompanies this notice.

Respectfully submitted this 12th day of September, 2022.

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